



DEC 08 1989

Reply To
Attn Of: SO-125

RECEIVED
DEC 08 1989
SUPERFUND BRANCH

Doug Dixon
Office of Enforcement and Compliance Monitoring
Room M3219G, M/S LE 134S
401 M Street S.W.
Washington, D.C. 20460

Re: Colbert Landfill, Spokane County, Washington

Dear Doug:

(b)(5) attorney-client, (b)(5)

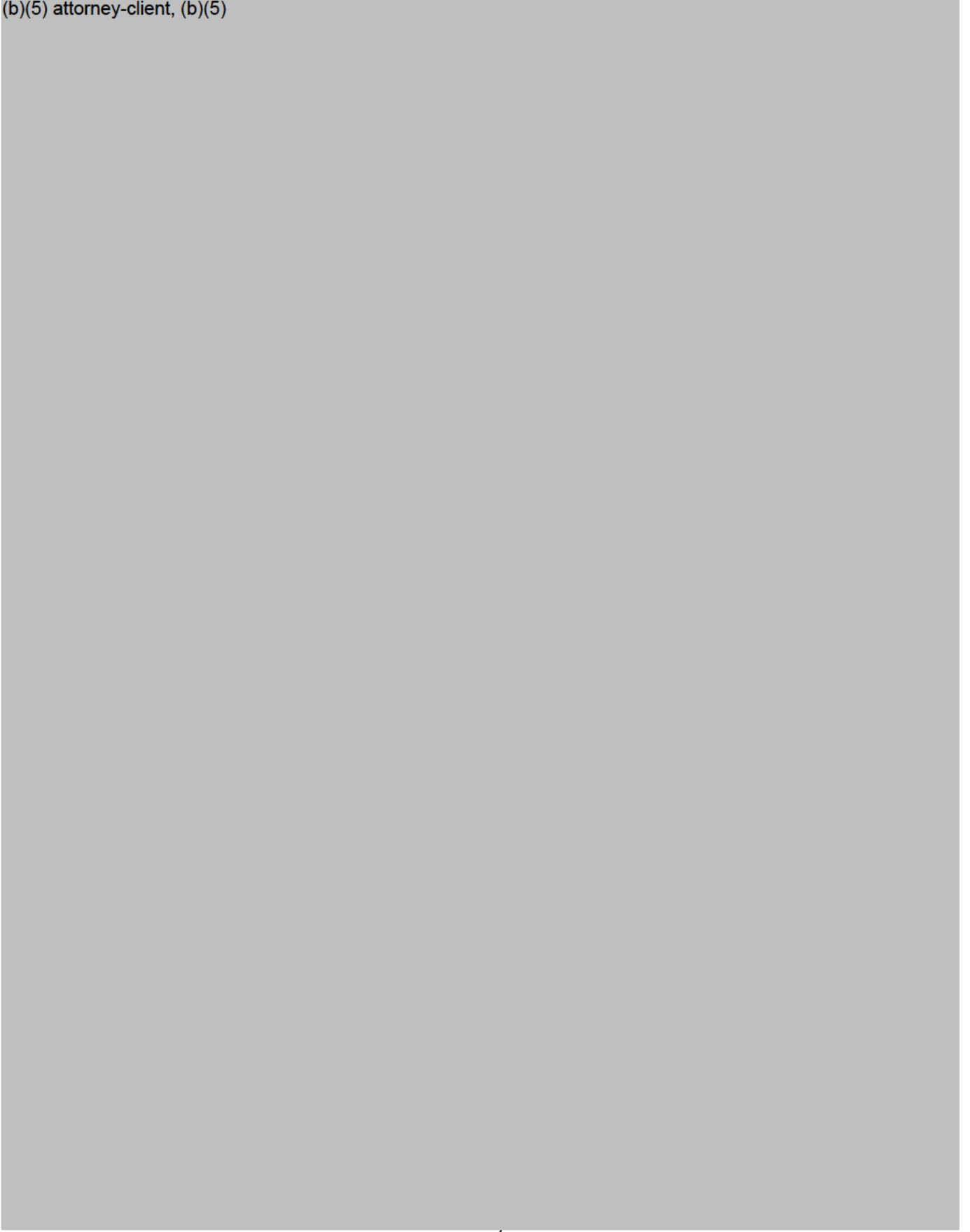
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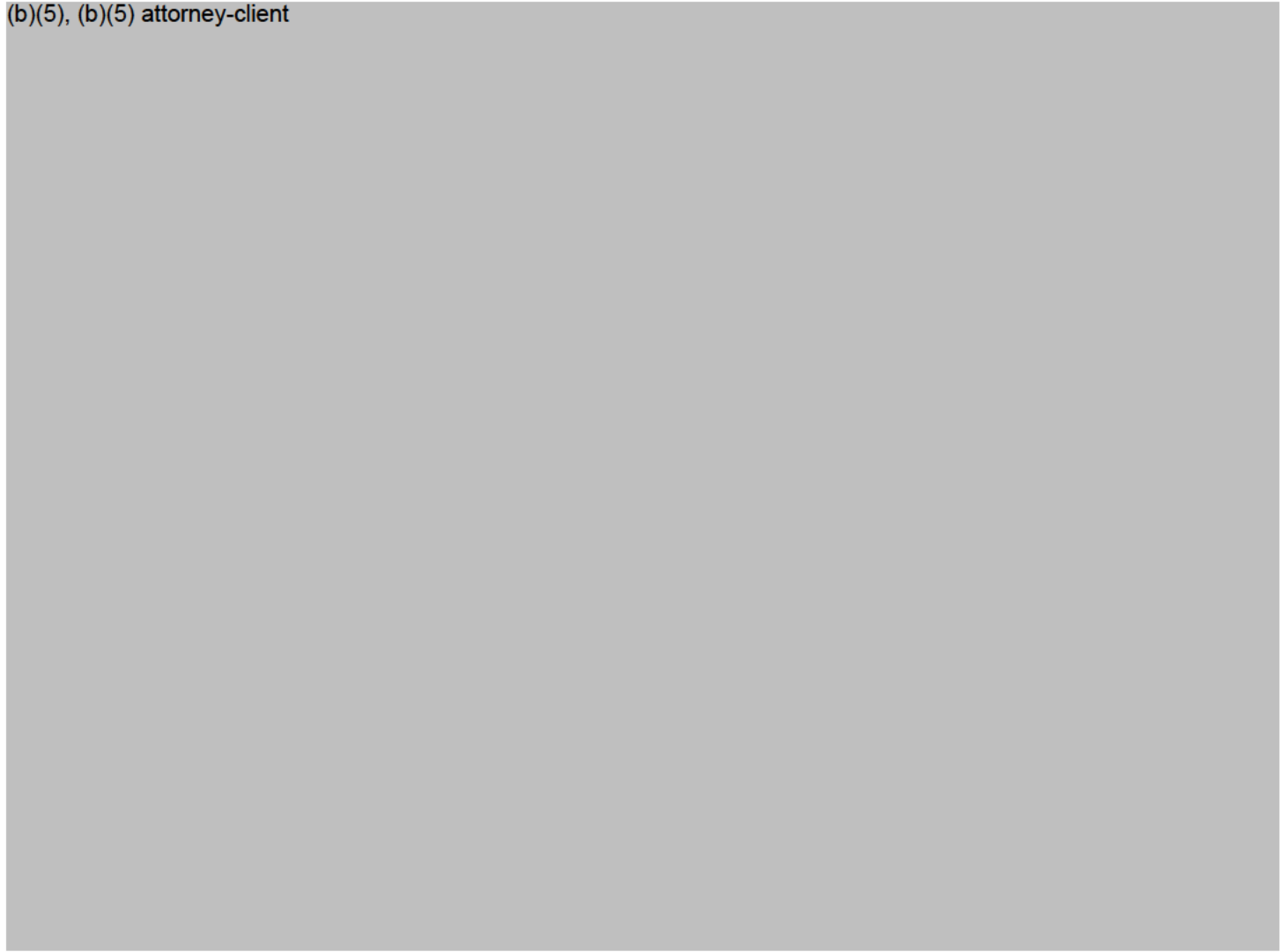


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(b)(5) attorney-client, (b)(5)



(b)(5), (b)(5) attorney-client



I am particularly interested in your suggestions and comments regarding (b)(5), (b)(5) attorney-client (b)(5), (b)(5) attorney-client. Please call me if you have any questions or comments. My phone number is FTS 399-1777.

Thank you for your assistance.

Sincerely,


Cynthia L. Mackey
Assistant Regional Counsel

Enclosures
cc: Neil Thompson

1 IN THE MATTER OF COLBERT LANDFILL,)
2 SPOKANE COUNTY, WASHINGTON, PROCEEDING))
3 UNDER SECTION 122(g)(4) OF THE)
4 COMPREHENSIVE ENVIRONMENTAL RESPONSE,)
5 COMPENSATION, AND LIABILITY ACT OF)
6 1980 ("CERCLA"), AS AMENDED ("SARA").)
7 U.S. E.P.A. DOCKET NO. _____)
8 ADMINISTRATIVE ORDER ON CONSENT AND)
9 INTERAGENCY AGREEMENT: (AN INTENDED)
10 "EXPEDITED FINAL SETTLEMENT").)
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ADMINISTRATIVE ORDER
ON CONSENT AND
INTERAGENCY AGREEMENT

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1 I. JURISDICTION

2 This Administrative Order on Consent and InterAgency Agreement ("Consent
3 Order" and "Agreement") is issued pursuant to the authority vested in the
4 President of the United States by Section 122(g)(4) of the Comprehensive
5 Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA") as
6 amended by the Superfund Amendments and Re-authorization Act of 1986 ("SARA"),
7 to reach settlements in actions. That authority vested in the President has
8 been delegated to the Administrator of the United States Environmental
9 Protection Agency ("EPA") by Executive Order 12580, and further delegated to
10 the Regional Administrators of the Environmental Protection Agency by
11 Environmental Protection Agency Delegation.

12 This Administrative ("Expedited Final Settlement") Order on Consent and
13 Agreement is issued to the Department of the Air Force ("Respondent"). The
14 Respondent agrees to undertake all actions required of it by the terms and
15 conditions of this Consent Order and Agreement.

16 The Respondent consents and agrees to and will not contest the
17 Environmental Protection Agency's jurisdiction to issue this Consent Order and
18 Agreement nor to implement or enforce its terms.

19 II. STATEMENT OF PURPOSE

20 The purpose of this Consent Order and Agreement is to set forth the
21 Agreements reached by the Environmental Protection Agency and the Department of
22 the Air Force and the State of Washington, Department of Ecology and the
23 Department of the Air Force.

24 1. The Parties, E.P.A., "Ecology" and the Air Force, have reached agreement
25 which they intend to be an "Expedited Final Settlement."

26 2. The Parties intend that certain appropriated funds from the Defense

1 Environment Restoration Account, ("D.E.R.A") be obligated and later dispursed
2 to E.P.A. or to a "Colbert Landfill Special Fund" Trust.

3 3. This agreement is to complete the "contribution" of the Air Force to the
4 Colbert Landfill remediaction, to render the performance of the Air Force's
5 response to the E.P.A. Notice Letter dated January 08, 1988, and for the Air
6 Force to fulfill its statutory obligations under CERCLA/SARA and D.E.R.A.

7 4. This document is to set forth and make express certain substantive and
8 procedural provisions agreed to by the Parties.

9 III. STATEMENT OF FACTS

10 1. The Colbert Landfill, Spokane County, Washington, was a forty (40) acre
11 landfill operated by Spokane County or its contractor between approximately
12 1968 and 1981. The landfill is now "closed" and "capped".

13 2. During a portion of that time liquid wastes from Fairchild AFB, among
14 others, were lawfully disposed at that Site after consultation with Spokane
15 County using accepted practices of the period. Those liquid wastes included
16 which subsequent to their lawful disposal at the site, were
17 wastes, later classified as "hazardous substances". Those wastes entered into
18 and migrated in underlying aquifers as described in the "Remedial
Investigation, Colbert Landfill" (1987).

19 3. A "remediation action" was selected as described in the "Record of
20 Decision, Decision Summary, and Responsiveness Summary for Interim Final (sic)
21 Remedial Action Colbert Landfill Site, Colbert, Washington." (Environmental
22 Protection Agency Region X, September 1987).

23 4. As a result of the release or threatened release of hazardous substances
24 into the environment, Environmental Protection Agency has undertaken a response
25 action at the Site under section 104 of CERCLA, 42 U.S.C. 9604, and will
26 continue that response action into the future. That response action includes

1 the "Remedial Investigation" and "Decision Process" cited above. It
2 contemplates (as described therein) the containment, capture, extraction,
3 treatment, and discharge of (contaminated) ground water. It also provides for
4 the supply of safe drinking water to local residents in the immediate area of
5 contamination. (This remediation will be more particularly described in a
6 "Scope of Work" document now under preparation.)

7 5. In performing this response action, Environmental Protection Agency has
8 incurred and will continue to incur response costs at or in connection with the
9 Site. Environmental Protection Agency has expended approximately six hundred
10 thirty-five thousand dollars (\$635,000.00) as of December 1987. The State of
11 Washington has expended approximately two hundred eighty-five thousand dollars
12 (\$285,000.00).

13 6. Information currently known to Environmental Protection Agency indicates;

14 (a) the amount of hazardous substances contributed to the Site by
15 Respondent does not exceed ten percent (10%) by volume of the known hazardous
16 substances at the Site (and represents a much smaller percentage of the
17 probable un-recorded site waste load),

18 (b) the toxic or other hazardous substances contributed by Respondent to
19 the Site do not contribute disproportionately to the cumulative toxic or other
20 hazardous effects of the hazardous substances at the Site, i.e. Respondent's
21 disposed substances are of the same general type as those disposed by the other
22 Potentially Responsible Parties.

23 7. In evaluating the settlement embodied in this Consent Order, Environmental
24 Protection Agency considered the potential costs of remediation at and in
25 connection with the Site taking into account possible cost overruns in
26 completing the remedial action, and possible future costs if the remedial

1 action is not protective of public health or the environment, and finds it to
2 be in the Public Interest to enter into an Expedited Final Settlement with the
3 Respondent which requires an immediate cash payment in such an amount to allow
4 prompt design, construction, and operation of the remedial system.

5 8. Payments required to be made by the Respondent pursuant to this Consent
6 Order are a minor portion of the total response costs at the Site. The
7 Environmental Protection Agency, presently estimates those total cost to be
8 approximately thirteen million seven hundred thousand dollars (\$13,700,000.00)
9 to fourteen million dollars (\$14,000,000.00).

10 9. The Environmental Protection Agency has identified persons other than the
11 Respondent, other Potentially Responsible Parties, who owned or operated the
12 Site, or who arranged for disposal or treatment, or arranged with a transporter
13 for disposal or treatment, of a hazardous substance or hazardous substances
14 owned or possessed by such person at the Site, or who accepted a hazardous
15 substance or hazardous substances for transport to the Site. The Environmental
16 Protection Agency has considered the nature of its cases against these other
17 Potentially Responsible Parties in evaluating the settlement embodied in this
18 Consent Order and Agreement.

19 IV. DETERMINATIONS

20 Based upon the Findings of Fact set forth above and on the administrative
21 record for this Site, Environmental Protection Agency has determined that;

- 22 1. The Colbert Landfill site is a "facility" as that term is defined in
23 section 101(9) of CERCLA, 42 U.S.C. 9601(9),
- 24 2. The Respondent, the Department of the Air Force, is a "person" as that term
25 is defined in section 101(21) of CERCLA 42 U.S.C. 9601(21),
- 26 3. The Respondent is a "Potentially Responsible Party" within the meaning of

1 section 107(a) and 122(g)(1),

2 4. The past, present or future migration of hazardous substances at or from
3 the Site constitute an actual or threatened "release" as that term is defined
4 in section 101(22) of CERCLA, 42 U.S.C. 9601(22),

5 5. Prompt final settlement with the Respondent is practicable and in the
6 public interest within the meaning of section 122(g)(1) of CERCLA, 42 U.S.C.
7 9622(g)(1),

8 6. This Consent Order and Agreement involves only a minor portion of the
9 response costs at the Site with respect to the Respondent pursuant to section
10 122(g)(1) of CERCLA, 42 U.S.C. 9622(g)(1),

11 7. The amount of hazardous substances contributed to the Site by the
12 Respondent and the toxic or other hazardous effects of the hazardous substances
13 contributed to the Site by the Respondent are minimal in comparison to other
14 hazardous substances at the Site pursuant to section 122(g)(1)(A) of CERCLA, 42
15 U.S.C. 9622(g)(1)(A).

16 V. ORDER

17 Based upon the Administrative Record for this Site, the Findings of Fact
18 and the Determinations set forth above, and to elaborate on the "Agreement in
19 Principle" (Attachment 2), and in consideration of the promises and covenants
20 set forth herein, it is hereby consented, agreed to, and ordered:

21 1. Payment:

22 (a) The Respondent Air Force shall cause to be "Obligated", by a
23 "miscellaneous obligation document" an amount of one million four hundred fifty
24 thousand dollars (\$1,450,000.00) within thirty (30) days of the effective date
25 of this Consent Order and Agreement. This is the total "Expedited Final
26 Settlement" amount to be paid by the Respondent.

1 (b) Of the total payment of one million four hundred fifty thousand
2 dollars (\$1,450,000.00) to be made by the Respondent Air Force pursuant to
3 sub-paragraph 1.(a) of this section:

4 (1) one million, two hundred thousand dollars (\$1,200,000.00)
5 represents the Respondent's share of the sum of the response costs of the
6 Environmental Protection Agency (and the State of Washington, Department of
7 Ecology) to date and of the projected costs, including possible cost overruns,
8 of the remedial action consistent with the Record of Decision ("ROD") for this
9 Site. These estimated total remediation costs are presently estimated by the
10 Environmental Protection Agency to be between thirteen million, seven hundred
11 thousand dollars (\$13,700,000.00) and fourteen million dollars (\$14,000,000.00).

12 (2) The remainder of this "Expedited Final Settlement" amount, two
13 hundred fifty thousand dollars (\$250,000.00) represents the Respondent's share
14 of any costs which may be incurred if Environmental Protection Agency
15 determines that the remedial action consistent with the Record of Decision
16 ("ROD") is not fully protective of public health or the environment; this
17 remainder is a "premium" payment in consideration for an "Expedited Final
18 Settlement".

19 (c) To the extent practicable, the Environmental Protection Agency shall
20 not request funds payments until needed, and the Respondent shall direct
21 disbursement of the funds as requested as soon as practicable. Parties intent
22 that payment be before the end of this 1988-89 Federal Fiscal Year.

23 (d) Each payment shall be made by a United States Treasury check made payable
24 to "Environmental Protection Agency Hazardous Substance Superfund" or, at the
25 Environmental Protection Agency's request, to a "Colbert Landfill Special Fund"
26 Trust, (Trust Agreement, Atch 3) which shall reference the site name, the name

1 and address of the Respondent and the Environmental Protection Agency docket
2 number for this action, and be sent to:

3 Environmental Protection Agency Superfund,
4 P.O. Box 371003M
5 Pittsburgh, Pennsylvania
6 15251

7 or the appropriate trust address.

8 Payment checks shall be drawn against "Obligated" Defense Environmental
9 Restoration Account funds as available through lawful appropriations and
10 obligated by an authorized, representative official of the Department of the
11 Air Force.

12 (e) The Respondent shall simultaneously send a copy of the payment check
13 to:

14 Regional Counsel

15 Attn: Robert Goodstein, Esq.

16 Environmental Protection Agency Region X

17 Seattle, WA 98101

18 and to:

19 State of Washington

20 Attorney General, Ecology Division

21 Lacey, WA 98504

22 ATTN: Jeffery Myers, Esq.

23 (f) Disbursement and payment of these monies shall constitute timely,
24 substantial performance of the response action, cost reimbursement, and
25 satisfactory completion of all matters of the Special Notice Letter (Atch 1) as
26 to the Potentially Responsible Party, the Department of the Air Force.

2. Refund of Monies

This "Expedited Final Settlement" is made from the transfer of funds from the Defense Environmental Restoration Account, 10 USC Chapter 160, sec 2703, authorized and appropriated by law, for the general purpose to "carry out a program of environmental restoration" with a goal of "correction of the other environmental damage" including "a removal or remedial action" and limits fund obligation to "environmental restoration function".

(a) Therefore should the Colbert Landfill remediation effort be abandoned, terminated, or cancelled before its completion the Environmental Protection Agency obligates itself and agrees to return a portion of funds transferred by the Respondent Air Force according to this Consent Order Agreement. "The Refund", shall be in an amount which is in the same ratio to the expedited final settlement amount as the total expenses of partial remediation until termination are to the estimated cost of total remediation at the time of termination:

<u>refund amount</u>	:	<u>expended remediation costs</u>
<u>settlement fund</u>	:	<u>estimated total remediation</u>

(b) The amount to be refunded shall be transferred by the Environmental Protection Agency from its Superfund Account within the same fiscal year in which the termination of the Colbert Landfill remediation occurs, or from the Colbert Landfill Special Fund Trust, or from a combination of those funds as necessary to pay "the refund". "The Refund" shall be paid to the United States Treasury.

(c) No other credits nor additions shall be sought by either party to this Consent Order and Agreement on account of cost savings, overruns, "scope of work" additions or deletions or for any other reason.

1 3. Intended Final Settlement

2 This Consent Order and Agreement is intended to be an "Expedited Final
3 Settlement" as to the Department of the Air Force:

4 (a) The Environmental Protection Agency intends, consents and agrees to
5 NOT seek further relief from the Respondent Air Force and this Consent Order
6 and Agreement is NOT null and void, even if;

7 (1) Information not currently known to Environmental Protection Agency
8 is discovered which would indicate that the Respondent Air Force contributed
9 hazardous substances to the Site in such greater amount or of such greater
10 toxic of other hazardous effects that the Respondent Air Force would no longer
11 qualify as a de minimis party at the Site.

12 (2) Costs incurred during the completion of the remedial action
13 "consistent with the Record of Decision" at the Site exceed or are less than
14 present cost estimates, or

15 (3) Environmental Protection Agency determines, based upon conditions
16 at the Site, previously unknown to Environmental Protection Agency, or
17 information received, in whole or in part, after entry of this Consent Order,
18 that the remedial action consistent with the Record of Decision (ROD) is not to
19 be fully protective of public health or the environment.

20 (4) No other credits or addition shall be sought by either party to
21 this Consent Order and Agreement on account of cost estimate savings, overruns,
22 "scope of work" additions or deletions or any other reason.

23 4. Information Disclosure

24 The Respondent certifies that, to the best of its knowledge and belief, it
25 has provided the Environmental Protection Agency all information currently in
26 its possession, or in the possession of its officers, employees, contractors or

1 agents, which relates in any way to the ownership, operation, generation,
2 treatment, transportation or disposal of hazardous substances at or in
3 connection with the Site.

4 5. Non-Admission of Liability

5 The Environmental Protection Agency and the Department of the Air Force
6 intend and agree that the recitations, actions, and payments undertaken by the
7 Respondent in accordance with this Consent Order and Agreement do not
8 constitute an admission of liability by the Respondent Air Force nor the United
9 States of America.

10 (a) The Respondent and the United States of America does not admit and
11 retains the right to deny and/or controvert in any contemporaneous or
12 subsequent proceedings, other than proceedings to implement or enforce this
13 Consent Order and Agreement, the validity of the "Findings of Fact" or
14 "Determinations" contained in this Consent Order and Agreement.

15 (b) Specifically, both Parties to this Consent Order and Agreement, i.e.
16 the Environmental Protection Agency and the Respondent Air Force intend to
17 fully retain and to not waive any defenses available, and to not admit any fact
18 or liability in any past, present, or future action in the nature of an
19 administrative claim, or civil action, whether tort or contract, or any other
20 action in law or equity from any act, error, or omission in, at, or about the
21 site, from an action, disposed materials, from the Response Action, or from any
22 other act for themselves, their employees, agents, and contractors, or on the
23 behalf of the United States of America.

24 6. Reservation of rights

25 Nothing in this Consent Order and Agreement is intended to be nor shall it
26 be construed as a release or covenant not to sue for any claim or cause of

1 action, administrative or judicial, civil or criminal, past, present, or
2 future, at law or in equity, which the United States, including Environmental
3 Protection Agency may have against any Settling Defendant for;

4 (a) Any liability as a result of failure to make the payments required by
5 Section V, Paragraph 1, of this Consent Order and Agreement or:

6 (b) Any matters not expressly included in Covered Matters, including,
7 without limitation, any liability for damages to natural resources.

8 (c) Nothing in this Consent Order and Agreement is intended as a release
9 or covenant not to sue for any claim or cause of action, administrative or
10 judicial, civil or criminal, past, present, or future, in law or in equity,
11 which the United States, including Environmental Protection Agency, may have
12 against any other person, firm, corporation, or other entity not a party to
13 this Consent Order and Agreement.

14 7. Covenant Not to Sue

15 Subject to the "Reservations of Rights" in Section V, Paragraph 6, of this
16 Consent Order, upon "Obligation" of the amount specified in Section V,
17 Paragraph 1, Sub-paragraph (a), of this Consent Order and Agreement, the
18 Environmental Protection Agency covenants not to sue nor to take any other
19 civil, administrative, or judicial action against the Respondent for "Covered
20 Matters".

21 (a) "Covered Matters" shall include any and all civil liability for
22 reimbursement of response costs or for injunctive relief pursuant to sections
23 106 or 107(a) of CERCLA, 42 U.S.C. 9606 or 9607(a), or section 7003 of the
24 Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6973, with regard
25 to the Site.

26 (b) In consideration of Environmental Protection Agency's "Covenant Not To

1 Sue" in Section V, Paragraph 7, of this Consent Order, the Respondent Air Force
2 agrees not to assert any claims or causes of action against the United States,
3 the Environmental Protection Agency, or the Hazardous Substance Superfund
4 (except for refund of monies in the event of termination of the remediation
5 action and non-performance of Section V, paragraph 2) arising out of Covered
6 Matters, or to seek any other costs, damages, or attorney's fees from the
7 United States arising out of response activities at the Site.

8 8. Contribution Protection

9 Subject to the "Reservation of Rights" (in Section V, Paragraph 6(a), (b),
10 and (c)) of this Consent Order and Agreement, Environmental Protection Agency
11 agrees that by entering into and carrying out the terms of this Consent Order
12 and Agreement, the Respondent Air Force will have completely resolved its
13 liability to the United States of America for Covered Matters pursuant to
14 section 122(g)(5) of CERCLA, 42 U.S.C. 9622(g)(5), and shall not be liable for
15 claims for contribution for Covered Matters by any other person.

16 9. Modifications

17 Any modifications or deletions to this Consent Order shall be only by
18 mutual agreement of both parties, hereto.

19 10. Disputes

20 Any disputes involving this Consent Order and Agreement shall be submitted
21 to the Attorney General (or his designee) to be resolved by his written opinion
22 and decision, which shall be binding on the parties.

23 11. Audits

24 Each Party, and its designee, agent, contractor, or trustee shall keep and
25 make available such records as to facilitate and enable a generally accredited
26 audit to be performed.

1 12. Attorney General's Approval

2 Because this Expedited Final Settlement exceeds five hundred thousand
3 dollars (\$500,000), the Attorney General (or his designee) must issue prior
4 written approval of this Expedited Final Settlement embodied in this Consent
5 Order and Agreement in accordance with section 122(g)(4) of CERCLA/SARA.

6 13. Public Comment

7 This Consent Order and Agreement shall be subject to a thirty (30) day
8 public comment period pursuant to section 122(1) of CERCLA, 42 U.S. C. 9622
9 (1). In accordance with section 122(1)(3) of CERCLA, 42 U.S.C. 9622(1) (3).,
10 Environmental Protection Agency has the authority to withdraw consent to this
11 Consent Order if comments received disclose facts or considerations which
12 indicate that this Consent Order is inappropriate, improper or inadequate.

13 14. Conditions Precedent to Effectiveness

14 This Administrative Order on Consent and Agreement shall become effective
15 only, after the occurrence of all of the following:

16 (a) ~~Prior written approval of the Attorney General (or his designee)~~

17 (b) ~~Written notice of acceptance of this Consent Order and Agreement in~~
18 ~~satisfaction of its claims and causes of actions against the Department of the~~
19 ~~Air Force and the release of the Respondent from future or additional liability~~
20 ~~by the State of Washington.~~

21 (c) Agreement, execution, and signature by duly authorized representatives
22 of the Environmental Protection Agency and the Respondent Air Force.

23 (d) Environmental Protection Agency gives written notice of the expiration
24 of the Public Comment period together with written notice of continuation of
25 the mutually stated obligations under the terms of this Consent Order and
26 Agreement to the Respondent.

1 15. Effective Date

2 The effective date of this Consent Order and Agreement shall be the date
3 upon which the Environmental Protection Agency issues written notice to the
4 Respondent Air Force that the public comment period pursuant to section V,
5 Paragraph 15, of this Consent Order and Agreement has closed and that no
6 comments received have necessitated modification of nor withdrawal from this
7 Consent Order and Agreement.

8 16. Certification of Signatories

9 This Consent Order and Agreement shall apply to and be binding upon the
10 Environmental Protection Agency and the Department of the Air Force and their
11 officers, employees, agents, successors and assigns. Each signatory to this
12 Consent Order and Agreement certifies he/she is authorized to enter into the
13 terms and conditions of this Consent Order and Agreement and to bind legally
14 the party represented by him/her.

15 IT IS SO AGREED, CONSENTED, AND ORDERED.

16 s/s _____ for the

17 Environmental Protection Agency

18 s/s Donald A Kane 30 SEP 1998 for the

19 Department of the Air Force

20 DONALD A. KANE, COL, USAF, BSC
21 Chief, Environmental Division
22 Directorate of Engr & Surv.

1 VII. ATTACHMENTS

- 2 1. Special Notice Letter.
- 3 2. Letter, "Agreement in Principle".
- 4 3. Environmental Protection Agency's Trust.
- 5 4. Attorney General's Written Approval.
- 6 5. Parallel State Proceedings
- 7 (a) Summons
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COLBERT LANDFILL TRUST FUND

THIS DECLARATION OF TRUST, dated this 10 day of March, 198~~8~~⁹, is made and entered into by and among SPOKANE COUNTY ("Settlor"), and WASHINGTON TRUST BANK ("Trustee"), pursuant to the Agreements on Consent to Implement Focused Corrective Action Measures pursuant to State of Washington, Department of Ecology, and United States Environmental Protection Agency v. Key Tronic, Inc., and Spokane County, No. _____ and State of Washington, Department of Ecology v. United States Air Force, No. _____ (the "Consent Agreements").

WITNESSETH:

WHEREAS, UNITED STATES AIR FORCE has agreed to transfer, assign, and convey unto the Trustee the sum of One Million Four Hundred Fifty Thousand Dollars (\$1,450,000.00) in trust, pursuant to the terms of this Agreement; and

WHEREAS, KEY TRONIC, INC., a Washington corporation, has agreed to transfer, assign, and convey unto the Trustee the sum of Four Million Two Hundred Thousand Dollars (\$4,200,000.00) in trust, pursuant to the terms of the Consent Agreements; and

WHEREAS, funds transferred by UNITED STATES AIR FORCE and KEY TRONIC, INC., a Washington corporation, shall constitute the initial corpus of the trust hereby created and shall be held, invested, and distributed pursuant to the terms of this Agreement, it is therefore agreed as follows:

I. Trust Estate. The Trust Estate, as that term is used in this trust, shall consist of the following:

1. The assets transferred to the Trustee by UNITED STATES FORCE and KEY TRONIC, INC., a Washington corporation, as hereinabove provided; and
2. Any funds transferred to the Trustee by any other person or entity; and
3. The proceeds, investments, and reinvestments of the assets so transferred to the Trustee.

II. Trust Purpose. The Trustee shall hold, invest, reinvest, and distribute the Trust Estate, as Trustee, in accordance with the terms and conditions set forth herein. This trust is organized and shall be operated to provide a source of funds for the purpose of paying for the remedial action referenced in the Consent Agreements. In furtherance of this purpose, the Director of the Department of Ecology, hereinafter referred to as the "Director" has sole power to direct the Trustee and the distribution of the Trust Estate in the manner hereinafter provided for.

III. Distributions. The Trust Estate shall be distributed by the Trustee from time to time as directed by the Director pursuant to the Consent Agreements. The Trustee may rely with acquittance upon any direction of payment made pursuant to the Consent Agreements.

IV. Duration. This trust shall continue until the earlier of the issuance of a Certificate of Completion to SPOKANE COUNTY pursuant to the provisions of Section XXX of the Consent Agreements, or until the Trust Estate has been distributed for the activities and purposes set forth herein. If the Trust Estate has not been wholly distributed prior to the earliest date referred to in the first sentence of this paragraph, and there has not been a direction to distribute funds pursuant to Consent Agreements which will exhaust the funds, then all such remaining unappointed funds shall be delivered forthwith one-half (1/2) to the State of Washington, Department of Ecology, and one-half (1/2) to the United States Environmental Protection Agency.

V. Irrevocable Nature of Trust. The trust created by this Agreement shall be deemed irrevocable and the Settlor shall have no right whatsoever to alter, amend, revoke, or terminate this Trust Agreement in whole or in part. Further, it is the intention of KEY TRONIC, INC., a Washington corporation, and UNITED STATES AIR FORCE to transfer all of their interest in the Trust Estate transferred to the Trustee herein. Therefore, UNITED STATES AIR FORCE and KEY TRONIC, INC., a Washington corporation, and any other person or entity transferring assets to the Trustee hereunder, do hereby assign to the Trustee all right, title, and interest in and to the

Trust Estate and relinquish all administrative power over the Trust Estate or any power to control the beneficial enjoyment of the trust assets.

VI. Trustee. It is hereby directed to invest and reinvest the trust assets and such property as it from time to time deems prudent. Provided, however, that the Trustee's power to invest the trust assets shall be limited in the same manner as the ability of persons investing funds on behalf of municipalities within the State of Washington is limited pursuant to RCW 36.29.020 et seq.

VII. Powers and Duties of Trustee. Except as specifically restricted hereunder, the Trustee shall have all duties, powers, and rights imposed and granted by the laws of the State of Washington.

In addition to the duties, powers, and rights imposed and granted by law, the Trustee shall have (unless specifically restricted herein) the power and the exercise of discretion in the application thereof to:

1. Determine the allocation of receipts and expenses between income and principal in accordance with the Washington Principal and Income Act;
2. Rely with acquittance upon the advice of counsel on questions of law;
3. Merge or combine any trusts hereunder with the trust or trusts otherwise established for the same purpose and substantially the same provisions, and thereafter administer and distribute such combined estate as one;
4. Appoint an ancillary trustee or agent to facilitate the management of assets located in another state, if any;
5. At any time to resign as Trustee of the trust created by this instrument without court proceeding, by delivering written notice of resignation as hereinafter provided;
6. To commence or defend at the expense of the trust such litigation with respect to the trust or any property of the trust as the Trustee may deem advisable;

7. Compromise, submit to arbitration, release with or without consideration, and otherwise adjust any claims in favor of or against the trust.

VIII. Resignation. The Trustee shall have the right to resign at any time by delivering its resignation in writing to the Settlor, such resignation to take effect upon the acceptance of appointment in writing by successor Trustee. Upon any such resignation, the Settlor shall deliver to the Director a copy of the Letter of Resignation, together with a letter proposing to appoint a successor Trustee. Provided, however, any successor Trustee shall be a corporation authorized to conduct trust business within the State of Washington and at the time of its appointment have assets of not less than One Hundred Million Dollars (\$100,000,000.00) of trust funds.

Upon the approval of successor Trustee by the Director, the Settlor shall in writing appoint a successor Trustee. Acceptance of appointment of successor Trustee shall be in writing and shall become effective upon receipt by the Settlor of the notice of such acceptance.

Any successor Trustee appointed under this article shall, upon appointment, immediately succeed to all powers, rights, discretions, obligations, and immunities of the Trustee under this Agreement with the same effect as though successor Trustee were originally named as Trustee in this Agreement.

IX. Compensation. The Trustee shall be entitled to be paid reasonable compensation as agreed upon by the Settlor and the Trustee.

X. Governing Law. This Trust Agreement shall be administered, construed, and enforced according to the laws of the State of Washington. Should any provision of this Agreement be or become invalid or unenforceable, the remaining provisions of this Agreement shall be and continue to be fully effective.

XI. Notices. Any notices or other communication required or permitted by this Agreement to be delivered to or served on the Trustee shall be deemed properly delivered to, or served on, and received by the Trustee when personally delivered to a trust